

FORTUNE OIL CO.

IBLA 82-903

Decided November 24, 1982

Appeal from decision of the New Mexico State Office, Bureau of Land Management, canceling noncompetitive oil and gas lease NM 43356 to the extent that it conflicts with oil and gas lease NM 42477.

Affirmed.

1. Oil and Gas Leases: Cancellation

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates.

2. Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases: Cancellation

Where an oil and gas lease has inadvertently been issued for land that was the subject of a then current lease in good standing, the later lease is properly canceled to the extent that it conflicts with the earlier lease notwithstanding the fact that the later lease has been assigned to parties claiming bona fide purchaser status. An assignee can stand in no better position than the assignor.

APPEARANCES: John R. Anderson, President, Fortune Oil Company, for appellant; Don E. Williams, Capitan Oil Company, for respondents Capitan Oil Company and NCC Energy, Inc.; John H. Harrington, Esq., Office of the Field Solicitor, Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Fortune Oil Company has appealed the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated May 6, 1982, canceling oil and gas lease NM 43356 to the extent that lands included in that lease were previously included in oil and gas lease NM 42477.

On September 24, 1980, Michael Shearn and A. D. Solsbery submitted oil and gas lease offer NM 42477 covering various lands in T. 9 N., R. 20 E., New Mexico principal meridian, including S 1/2 N 1/2, SW 1/4, N 1/2 SE 1/4, sec. 28, and NE 1/4, W 1/2, sec. 35. BLM issued a lease with an effective date of August 1, 1981, covering all of the lands in the offer on July 24, 1981. The lessees executed a 100 percent assignment of their interest in the lease on August 5, 1981, to Capitan Oil Company (Capitan). BLM approved this assignment on September 1, 1981. ^{1/} Thereafter, on January 29, 1982, Capitan assigned a 50 percent interest in the lease to NCC Energy, Inc. (NCC), which BLM approved on February 1, 1982.

Appellant filed its offer, NM 43356, on December 10, 1980, also covering various lands in T. 9 N., R. 20 E., New Mexico principal meridian, including the S 1/2 N 1/2, SW 1/4, N 1/2 SE 1/4, sec. 28 and N 1/2, SW 1/4, sec. 35. The lease issued on November 30, 1981, effective December 1, 1981, and included the above-described lands. A 50 percent interest in the lease was assigned to Chieftain International, Inc. (Chieftain), on January 4, 1982. ^{2/} BLM approved this assignment on February 1, 1982.

In its statement of reasons, appellant claims that its representative reviewed the appropriate BLM land records on December 9, 1980, and there was no listing on those records of an existing lease or pending offer for the lands at issue. Appellant therefore filed its offer and was subsequently issued lease NM 43365. Appellant reports that its assignment to Chieftain was made in good faith for good and valuable consideration. It adds that assignment of a portion of the overriding royalty interest held by John R. and G. W. Anderson has been committed, though not executed, to Michael L. Pinnell. Further, appellant and its assets, including lease NM 43365, were sold to Partners Energy in December 1981. Appellant argues therefore that there are several bona fide purchasers entitled to protection under 30 U.S.C. § 184(h)(2) (1976).

In response, Capitan and NCC argue that they, too, are bona fide purchasers entitled to protection. They note the distinction, however, that they are bona fide purchasers of a valid lease whereas the parties claiming under appellant are bona fide purchasers of an invalid lease. They urge that the BLM decision be upheld.

Counsel for BLM responds that the assignees of various interests in lease NM 43356 are in no better position than appellant-assignor who could acquire no interest in the previously leased lands since BLM's inadvertent issuance of a second oil and gas lease that conflicts with a prior lease in good standing is a nullity to the extent of the conflict.

^{1/} An overriding royalty of one-half of 1 percent of eight-eighths of production was assigned to Joe B. Schutz on Nov. 17, 1981. In addition, lessees Shearn and Solsbery reserved a 3 percent overriding royalty.

^{2/} A 3 percent overriding royalty was reserved by Fortune Oil Company in its assignment to Chieftain. Although the record does not make it clear, this royalty interest apparently is that identified in appellant's statement of reasons as owned by John R. and G. W. Anderson. John R. Anderson is President of Fortune Oil Company.

[1] It is clear that the Secretary of the Interior generally has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); Husky Oil Co., 52 IBLA 41 (1981); Paul N. Temple, 33 IBLA 98 (1977). Review of the lease file for lease NM 42477 reveals that the lease offer, although received on September 24, 1980, was not noted on the oil and gas status plat until December 31, 1980, an unusually long delay. Thus, as appellant points out, the lands appeared to be available when appellant's representative reviewed the plat on December 9, 1980, and submitted offer NM 43356. Appellant's offer was not noted on the plat until April 4, 1981. The issuance of the two leases was noted on July 29, 1981, for NM 42477, and on January 13, 1982, for lease NM 43356. Although the fact of the conflict should have been apparent to anyone reviewing the plat after April 4, 1981, no explanation has been provided for the BLM error. Regardless of the reason, however, the fact remains that the portions of secs. 28 and 35 included in lease NM 42477 were not available for leasing when appellant's lease was issued and, therefore, the lease was void as to those lands. Paul N. Temple, supra.

BLM would have been able to cancel the lease to the extent of the conflict, duly refunding appropriate rentals tendered, had appellant retained it. It may do so now even though appellant has assigned its interest to alleged bona fide purchasers. Assignees can be in no better position than the assignor or hold a greater interest than the assignor could validly transfer. Husky Oil Co., supra. See Corbin on Contracts § 893 (1951). Where, as here, an oil and gas lease has inadvertently been issued for land that was the subject of a valid outstanding lease, appellant's subsequently issued lease is properly canceled to the extent it conflicts with the prior lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge